United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar

Wednesday, August 02, 2017 **Hearing Room 1675**

2:30 PM

2:16-24758 Swing House Rehearsal and Recording, Inc. **Chapter 11**

#1.00 Cont'd hearing re: Disclosure statement
fr. 6/27/17, 7/12/17, 7/26/17

Docket 128

Tentative Ruling:

Updated tentative ruling as of 7/31/17. No tentative ruling on the merits. Appearances are required on 8/1/17, but counsel may appear by telephone.

Prior tentative ruling as of 7/24/17. No tentative ruling on the merits. Appearances are required on 7/26/17, but counsel may appear by telephone.

Prior tentative ruling as of 7/11/17. No tentative ruling on the merits. Appearances are required on 7/12/17, but counsel may appear by telephone.

Prior tentative ruling as of 6/26/17. No tentative ruling on the merits. Appearances are required on 6/27/17.

Prior tentative ruling as of 6/6/17. Hearing rescheduled to 2:30 p.m. Appearances are required at 2:30 p.m.

The court should deny approval of the disclosure statement because the debtor's proposed new value plan on its face is not sufficiently market tested within the meaning of Bank of America National Trust and Savings Association v. 203 North LaSalle Street Partnership ("LaSalle"), 526 U.S. 434 (1999); see also, In re NNN Parkway 400 26, LLC, 505 B.R. 277, 281-283 (Bankr. C.D. Cal. 2014)(Albert, J.); see also, In re Arnold, 471 B.R. 578, 586 (Bankr. C.D. Cal. 2012)(approval of disclosure statement should be denied if plan is nonconfirmable on its face). As Judge Albert observed in NNN Parkway 400 26, LLC, "LaSalle requires that the quantum of new value be market tested; otherwise the parties and the court cannot know whether the amount of new value is most available. And if more (or better) could be gotten elsewhere, then the equity is effectively keeping a form or property or interest in the debtor despite not paying the dissenting creditors in full, by exercising its exclusive 'option' to direct/determine the source of the new

2:30 PM

CONT... Swing House Rehearsal and Recording, Inc. **Chapter 11**

value. But LaSalle is frustratingly vague as to what exactly a debtor must do to 'market test' the interest; the Supreme Court expressly left the question open while naming some alternatives, such as the right to bid for the same interest or the right to file a competing plan." In re NNN Parkway 400 26, LLC, 505 B.R. at 281, citing LaSalle, 526 U.S. at 458; see also, LaSalle, 526 U.S. at 455 ("It is doomed, we can say without necessarily exhausting its flaws, by its provision for vesting equity in the reorganized business in the Debtor's partners without extending an opportunity to anyone else either to compete for that equity or to propose a competing reorganization plan."). "[D] ebtors bear the burden of showing that the new money offered is the most and best reasonably obtainable after some 'market testing' . . . This probably requires, at a minimum, demonstration of a systematic effort designed to 'market test' the deal." In re NNN Parkway 400 26, LLC, 505 B.R. at 283. There is no demonstration of any systematic effort designed to "market test" the deal shown in debtor's papers as far as this court can see.

Party Information

Debtor(s):

Swing House Rehearsal and	Represented By Kurt Ramlo Jeffrey S Kwong Levene, Neale, Bender, Yoo & Brill LLP

Movant(s):

Swing House Rehearsal and	Represented By Kurt Ramlo Kurt Ramlo Jeffrey S Kwong Jeffrey S Kwong Levene, Neale, Bender, Yoo & Brill LLP Levene, Neale, Bender, Yoo & Brill LLP